



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

DRAFT

Date Introduced:	02/18/05	Bill No:	AB 853
Tax:	Sales and Use Tax Special Taxes	Author:	Jones
Related Bills:			

BILL SUMMARY

This bill would extend the timeframe under which a state tax lien is effective only for purposes of the use of Earnings Withholding Order for Taxes (EWOs). This bill would provide that, when using an EWO to collect state taxes, a tax lien continues in effect until the amount due and payable has been paid.

ANALYSIS

Current Law

Under existing law, in general, on the day a tax becomes due and payable but remains unpaid, a perfected and enforceable state tax lien is created for the amount due plus interest, penalties, and other costs. The lien attaches to real and personal property of a tax debtor by operation of law; nothing needs to be done to perfect the lien. The lien is in force for 10 years, unless the liability becomes satisfied or a Notice of State Tax Lien is recorded with a county recorder's office or the Secretary of State. The recording of the notice establishes a public record of the existence of the state tax lien against all real and personal property belonging to the tax debtor. Once a state tax lien has been recorded, it can be renewed in 10-year increments for a maximum of up to 30 years.

Under existing law, the Board is authorized to use EWO's to collect delinquent tax liabilities for which a state tax lien is in effect. An EWO is a continuing wage garnishment based on a percentage of a debtor's earnings, not to exceed 25 percent of disposable income. The EWO remains in effect until the total amount owing has been paid, or the order has been withdrawn.

In addition to the legal provisions, the Board has adopted restrictive policies in the Compliance Policy and Procedures Manual regarding tax liens. Some of the most important restrictions are: (1) a lien will not be filed on liabilities that do not include tax; (2) accounts must have a delinquent amount of \$2,000 or more; and (3) a Notice of State Tax Lien cannot be recorded until 180 days after an amount becomes delinquent on a Notice of Determination or Notice of Redetermination, or until 180 days after issuance of a billing for an amount due on a return filed without payment, or with a partial payment. The Board must mail a preliminary notice to the taxpayer at least 30 days before filing a lien with the county recorder or the Secretary of State. The notice must specify the following: (1) the statutory authority for filing the lien; (2) show the

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earliest date on which the lien may be recorded; and (3) explain the remedies available to the taxpayer to prevent the filing of the lien.

Proposed Law

This bill would amend Section 706.074 of the Code of Civil Procedure to provide that, for purposes of using an EWO to collect state taxes, a state tax lien continues in effect until the amount due and payable has been paid.

COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored by the Franchise Tax Board (FTB) in order to eliminate the need to process taxpayer accounts manually and to allow use of the most cost-effective collection method available. According to the FTB, they use an automated tax collection system to collect delinquent taxes. The automated system searches through more than 220 million income records to locate an individual's assets. Once assets are located, the system can issue levies on bank accounts, wages, rents, and other miscellaneous sources of income. The system can also automatically issue Notice of State Tax Liens when certain conditions are met. While the automated system can issue EWO's and Notices of State Tax Liens, the system cannot release an EWO once a lien has expired. As a result, the FTB staff must manually identify taxpayer accounts where the lien has expired and release the EWO.
2. **Board uses a manual system to issue EWO's and Notices of State Tax Liens.** The Board uses a manual tax collection system and evaluates taxpayer accounts on an individual basis to determine the most effective collection action. EWO's and Notices of State Tax Liens are issued and released on a manual basis. Once an EWO is issued, it remains in effect until the tax debt has been paid or the time has expired for legally collecting the tax. The Board has a separate process for identifying tax liens that are due to expire. The Board's system generates a report that lists all tax liens in effect. Taxpayer accounts are evaluated to determine if a lien should be rerecorded. It is during this process that Board staff would decide to rerecord a lien because an EWO was still in effect.

Because the Board already uses a manual process to identify tax liens that are due to expire, it doesn't have the problem in releasing EWO's, like FTB does, once a lien has expired.

COST ESTIMATE

This bill would not impact the Board's administrative costs.

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REVENUE ESTIMATE

This bill would not impact state's revenues.

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